



HOWARD GARDENER

~ Accredited Family and Commercial Sole or Joint or Anchor Mediator ~
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Agreement to Mediate

BASIC PRINCIPLES AND TERMS OF MEDIATION

The following terms are the basis for mediation conduct for mediators governed by Family Mediators Association (FMA).

Please would you read each point carefully, noting any questions you may have to bring to the first meeting with the mediator. At that meeting, if you decide to proceed, I shall ask you to sign this document as an indication of your commitment to the process and agreement to the terms listed.

A. MY ROLE AS A MEDIATOR

As a mediator I act in an impartial way. I therefore seek to help both participants equally. My role is to assist you both to explore possible ways of resolving disputes or making arrangements on any range of matters related to your separation or future separate living or in any matters relating to family issues.

I may only provide legal and/or financial or other information in a neutral way in order to help you understand the options available to you. I may not, do not and

cannot provide any advice (of any nature) on a 'best interests' or personalised basis. The choices and decisions remain yours to make. It is possible and often very helpful for you to have advice from your own solicitor or legal adviser during the mediation process in order to make informed decisions. You may also wish to liaise with your advisers as mediation progresses in order to enable them to remain informed as to progress.

I will as appropriate offer evaluation during or following mediation to inform you as to whether or not any specific way forwards identified in mediation is likely to receive the endorsement of a Court. You may ask us to offer evaluation at any stage of mediation, although there are some circumstances where our Code of Practice requires us to do so. I do not otherwise express opinions or make judgments about your individual or joint situation.

I cannot act as mediator if I have prior knowledge of the situation through any previous personal involvement as a lawyer, counsellor or in any other professional role. Although I may have other qualifications, in this context I act only as mediators.

I shall do my best to help each of you. I ask you to show your integrity and commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions.

B. WHAT I ASK YOU TO DO

1. Financial disclosure

I shall ask each of you to provide complete and accurate disclosure of all your financial circumstances, with supporting documents where necessary. This is called *financial disclosure*. I do not verify the completeness and accuracy of the information you provide but I shall ask you to sign and date a statement confirming that you have made a full disclosure. If it should emerge that full disclosure has not been made, any agreements flowing from proposals reached in mediation based on incomplete information can be set aside and the issue re-opened.

Information about your finances and other relevant facts related to personal finance is provided on an open basis. This means that the information is available to your individual legal or financial advisers and can be referred to in Court, either in support of an application made with your joint consent or in contested proceedings. This would be the case in any situation relating to financial disclosure on separation or divorce. It will assist your individual legal adviser and avoids information having to be provided twice over or duplicated (however, it does reinforce the importance of full and accurate disclosure as your individual legal or financial adviser is required to verify all information received).

2. Discussions in the course of mediation

Some people have asked about bringing their legal advisers to mediation sessions and once negotiations are underway and likely to move to a conclusion, if you both agree then I will be happy to work with your legal advisers to find an acceptable way for all, but the rules relating to discussions of options and solutions in mediation (see below) will still apply; as will confidentiality

The discussions you have with me with regard to possible terms of settlement or proposals for the future are understood to be *legally privileged*. This means that your discussions about the matters you need to settle and the proposals for settlement cannot be referred to in Court unless you each agree to waive your privilege. I also ask that you each and all agree not to call me to give evidence in Court, and by signing this document you agree.

3. The appropriateness of mediation

I work to the Family Mediators Association's Code of Practice at all times and will be concerned to ensure that each of you enter into the mediation process able to negotiate freely together and without risk of threat or harm. I ask you to tell me if there are concerns for you with regard to your ability to negotiate freely.

C. WHAT I DO FOR YOU :

1. Share information :

Because mediation is an open process between us, all information or correspondence from either of you will be shared openly with each of you. **The only exception to this is an address or telephone number which either one of you wishes to keep confidential and notifies me.**

2. Produce the following documents :

At the completion or closing of the mediation process or as appropriate during the mediation process, and as required, I shall draw up :

(a) **A privileged summary** (the Memorandum of Understanding) of your proposals for settlement which will include your proposals on all matters discussed in the mediation, arrangements for any and each child, property, finance, maintenance, child support and any other matters discussed and as appropriate to each of you. It may also include such evaluation as may be offered by me or requested by you.

(b) **An open summary** (Statement of your Finances) detailing your financial circumstances (except in mediations which relate only to issues concerning children)

These documents are provided to help you obtain separate and independent legal and/or other advice before entering into a legally binding agreement. It is also to safeguard you from making a legally binding agreement without fully understanding how it may affect your own individual position.

The exception many parents find helpful is that if arrangements for children are agreed and confirmed in Mediation , they can be relied on by both parents.

Following the end of mediation if there is any original documentation you would like

returned to you, I should be happy to arrange this upon request; otherwise all materials (including our file and case notes) will be retained for six years but may then be destroyed without further reference to you.

3. Maintain confidentiality

Mediation is a confidential process. I will not give information to your legal or other advisers or to any other third parties without obtaining your joint permission.

I ask that you do not embarrass me by asking me to keep any matter confidential or secret from your partner/former partner. I ask that save in emergencies you only speak to me in the Mediation sessions and when you are both present, otherwise I ask you to deal with my Administrator, Sonya Spicer

There are two exceptions to this confidentiality.

The first would be where you or any other person (most particularly a child) is at risk of serious harm. In these exceptional circumstances, I would normally seek to discuss the action to be taken with each of you before taking any action to contact the appropriate authorities in line with the Family Mediators Association Code of Practice.

The second is where I am required to make disclosure to the appropriate government authorities under the Proceeds of Crime Act 2002 and/or the relevant money laundering regulations. I may also be under a linked obligation to make such disclosure without informing you that I am doing so. I have no choice in this matter where the Act or the regulations apply, and may also in these circumstances have to discontinue mediation with you without further notice.

4. Keep proper records :

I usually make notes during mediation. All my notes are open notes and any of the participants in mediation may have access to these at any stage. If you wish to make notes during mediation, please feel comfortable doing so, provided the other participant agrees although I do ask that no sound or video recordings are made of the mediation process.

5. Maintain professional standards

My practice is monitored by a governing association, the Family Mediators Association, and I am required to have professional supervision/consultancy of our practice. From time to time, therefore, I discuss professional practice with my consultant, who may see files and related documents concerning your mediation. Such discussions are treated on a confidential basis and no identifying details regarding individuals will be available or required by our supervisor other than matters which might involve a breach of confidentiality.

Our practice is contracted to the Legal Services Commission, to whose quality assurance requirements I am required to manage our mediation files. From time to time, the Commission may have sight of files. Any access is strictly controlled and on a similar confidential basis.

D. ENDING MEDIATION

Each of you may terminate the mediation at any stage. I may also terminate the process if I do not think it appropriate or helpful to continue. If such a termination should occur on either basis, I shall do our best to provide you with information as to other appropriate ways of progressing your situation.

E. CHARGES

EITHER

I charge at the rate of £195 plus VAT per hour (the total charge for each 90-minute session will therefore be £292.50 plus VAT). I shall ask you to pay by cash or cheque at the end of each session, and shall then issue receipts for payments received. I charge at the same hourly rate of £195 plus VAT per hour for the preparation of documents. Unless otherwise specified the cost of preparing the documents is limited to £195 plus vat and which is payable before I send out the documents. I am always ready to provide you with costs estimates wherever possible and practicable in order to assist your costs budgeting.

OR

If you have been assessed as qualifying and eligible for Public Funding (formerly Legal Aid) for Family Mediation. That means that you will not be liable for your mediation costs. The VAT inclusive fee which is paid by the Legal Services Commission for your share of the mediation costs, and which also includes all charges relating to preparing for sessions and for the preparation of written summaries at the end of the mediation

And :

EITHER

If your partner/former partner has been assessed as qualifying and eligible for Public Funding (formerly Legal Aid) for Family Mediation. That means that your partner/former partner will not be individually liable for their share of the costs of mediation. The VAT inclusive fee which is paid by the Legal Services Commission for your partner/former partner's share of the mediation costs, and which also includes all charges relating to preparing for sessions and for the preparation of written summaries at the end of the mediation

OR

I shall be charging your partner/former partner at the rate of £97.50 plus VAT per hour. The total charge to your partner/former partner for each 90 minute session will therefore be £146.25. I shall also charge your partner/former partner at the same hourly rate of £97.50 plus VAT per hour for the preparation of documents.

F. CONCERNS AND COMPLAINTS :

My practice is governed by Family Mediators Association (FMA). Any concern you may have as to my practice should be referred to me in the first instance but if unresolved or otherwise, in writing to : The Family Mediators Association, PO Box 5, Bristol, BS99 3WZ.

I have read, understood and agree to the above:-

Signed

Date

Signed

Date